FILE COPY

Office-Supreme Court
FILED
JUL 22 196
JOHN F. DAVIS, CLE

No. 387

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Petitioner,*

v.

HOOSIER CARDINAL CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOSEPH L. RAUH, JR.,
JOHN SILARD,
STEPHEN I. SCHLOSSBERG,
HARRIETT R. TAYLOR,
1625 K Street, N.W.,
Washington 6, D. C.,
Attorneys for Petitioner.

Of Counsel:

MILES AND CUMMINGS,
605 Union Title Bldg.,
Indianapolis, Ind.

INDEX

	Page
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Statement	3
Reason for Granting the Writ	6
An Important Federal Question Is Presented by the Lower Court's Application of the Indiana Oral Contract Statute of Limitations to a Suit Under Section 301 of the Labor-Management Relations Act.	
1. An Important Federal Question	7
2. Conflict With This Court's Rulings	9
3. The Decisional Grounds Espoused Below Violate This Court's Pronouncements and Give Rise to a Serious Constitutional Issue	13
Conclusion	16
Appendix A—Rulings Below	17
Appendix B—"State Statutes of Limitations Governing Contract Actions"	23

Citations

Association of Westinghouse Employees v. *Westinghouse Electric Corp.*, 348 U.S. 437	4, 14, 15
Burnett v. *New York Central R. Co.*, 380 U.S. 424	6, 7, 10, 11, 12
Cope v. *Anderson*, 331 U.S. 461	6
Charles Dowd Box Co. v. *Courtney*, 368 U.S. 502	9
Falsetti v. *Local 2026*, No. 15263, C.A. 3	7
Fishbach and Moore, Inc. v. *International Union of Operating Engineers*, No. 19476, C.A. 9	7
Garrett v. *Moore-McCormack Co.*, 317 U.S. 239	10
Guaranty Trust Co. v. *York*, 326 U.S. 99	10
Holmberg v. *Armbrecht*, 327 U.S. 392	6, 11, 12

Page

Johnson v. *Hoosier Cardinal Corp.*, Cause No. C. 7824, Superior Court of Vanderburgh County, Indiana 4
Leh v. *General Petroleum Corp.*, #4 Oct. Term 1965 9, 14
Local 174, Teamsters v. *Lucas Flour Co.*, 369 U.S. 95 ..... 9, 11, 13
McAllister v. *Magnolia Petroleum Co.*, 357 U.S. 221 ..... 6, 8, 10, 11
Rawlings v. *Ray*, 312 U.S. 96 6
Republic Steel Corp. v. *Maddox*, 379 U.S. 650 11
Smith v. *Evening News Ass'n.*, 371 U.S. 195 ..... 4, 8, 10, 11, 14
Textile Workers v. *Lincoln Mills*, 353 U.S. 448 9
Tully v. *Fred Olsen Motor Service Company*, 134 N.W. 2d 393 7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Petitioner,*

v.

HOOSIER CARDINAL CORPORATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, International Union, UAW, prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Seventh Circuit, which affirm the dismissal by the District Court for the Southern District of Indiana of petitioner's suit under Section 301 of the Labor-Management Relations Act on the ground that the Indiana statute of limitations has run.

Opinion Below

The opinion and judgment of the Court of Appeals for the Seventh Circuit, which are not yet reported, appear *infra* in Appendix A, pp. 17 to 22.

Jurisdiction

The opinion and judgment of the United States Court of Appeals for the Seventh Circuit, affirming the District Court's dismissal of petitioner's suit, were entered on June 4, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether, as the court below held, the differing norms of state statutes of limitations control suits for the enforcement of collective bargaining agreements under Section 301 of the Labor-Management Relations Act.

2. Whether, as the court below also held, a Section 301 suit to enforce the vacation pay provisions of a written collective bargaining agreement is, for purposes of choosing the applicable statute of limitations, to be treated as a suit resting on the oral contract of hire between the employees and the employer.

Statute Involved

Section 301 of the Labor-Management Relations Act, 61 Stat. 156, 29 U.S.C. §185, provides in part:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in con-

troversy or without regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States . . ."

Statement

On September 1, 1955 the International Union, UAW and its Local 145, collective bargaining representative for the employees of the Hoosier Cardinal Corporation of Evansville, Indiana, entered into a three year collective bargaining agreement with the company (Complaint, Exhibit "A"). Among the usual provisions common to such labor-management agreements was Article VIII governing "Vacations." That Article, providing that "vacations shall be granted on the following basis," set forth four categories of employees with differing formulas for accumulation of vacation pay. Among the provisions of the Article was a clause that "employees who qualified for vacations in the previous year and whose employment is terminated for any reason before the vacation is taken will be paid that vacation at time of termination."

On June 1, 1957, the company terminated the employment of more than one hundred workers whose employment and vacation pay were controlled by the union-company agreement of 1955; but the company did not at that time or thereafter pay to the terminated employees their accumulated vacation pay as required by Article VIII of the agreement (Complaint, Paragraph 7). Eight months after this refusal to honor the agreement, the union's attorneys on February 21, 1958 filed a class action for the employees

against the company in the Superior Court of Vanderburgh County, Indiana (*Johnson* v. *Hoosier Cardinal Corp.*, Cause No. C-7824). At that time, this Court's ruling in *Association of Westinghouse Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, appeared to preclude a resort to the federal courts.

On January 21, 1959, the Superior Court ruled that the class action was improper under Indiana law. Thereafter, each of the former employees assigned his claim to union representative Frank Kavanaugh, who, on June 3, 1959, filed an amended complaint in the action in the nature of a representative claim for all the employees. However, on September 23, 1959, a demurrer to the amended complaint was sustained by the court on the ground that the assignment method of suit is improper under Indiana law. Thereupon, on March 18, 1960, by another amended complaint the union's attorneys reinstituted the original class action, and upon its dismissal by the court on June 3, 1960, an appeal was taken to the Appellate Court of Indiana. On April 18, 1963, that court affirmed the dismissal of the action.

Meanwhile, in *Smith* v. *Evening News Ass'n.*, 371 U.S. 195, this Court had effectively overruled its earlier *Westinghouse* limitation, and opened the door to Section 301 suits in federal court for such employee benefits under collective bargaining agreements as the vacation pay involved in this case. Accordingly, on April 8, 1964, the union filed this Section 301 action in the United States District Court for the Southern District of Indiana for the recovery of the vacation pay due the former employees of the company. The company interposed the defense of statute of limitations, urging that over six years had passed since the employee terminations had vested the vacation pay rights claimed under the contract, and pleading the Indiana Act of

1881 (Spec. Sess.) Ch. 38, Sec. 37 (2 Burns Ind. Statutes Annotated, Section 601), which provides that suits must be commenced within six years on "contracts not in writing." The company asserted that the union's suit for wages due, while nominally based upon the vacation pay provisions of the collective bargaining agreement, was actually grounded upon the individual oral hiring agreements between the employees and the company. As a suit "in effect . . . under the separate individual [oral] employment contracts of the former employees" (defendant's brief, p. 4), the company urged that the six year statute rather than the 20-year Indiana statute governing "contracts in writing" applies to this action.

On November 12, 1964, the District Court filed an opinion upholding this company contention, and dismissing the union's complaint. On appeal to the Court of Appeals for the Seventh Circuit, the union's principal argument was that Indiana statutes of limitations do not apply to and cannot bar a federal suit under Section 301. On June 4, 1965, the court below issued its opinion holding that state statutes of limitations govern the time for commencing Section 301 actions. In reaching that result, the court below holds that the suit is "actually a case by an agent [the union] to enforce the rights of individual workmen," and that "the question of whether vacation pay is due the workmen here involved is a question of state law." For these reasons the court rules that the suit is "subject to the Indiana statute of limitations" (*infra*, p. 19). It then upholds the dismissal of the suit under the six-year Indiana statute governing "contracts not in writing," on the theory that, although the vacation pay provisions of the collective bargaining agreement are in writing, the action is actually "based upon the [oral] contracts of employment between the individual employees and defendant."

There is thus presented on these facts the question whether suits on collective bargaining agreements under Section 301 of the Labor-Management Relations Act are subject to diverse state statutes of limitations and whether a Section 301 suit for vacation pay is in effect a common law action based on the individual employee contracts of hire. As we urge below, the lower court's ruling conflicts with this Court's decisions, and corrective review is required to avoid discordant diversity in the enforcement of collective bargaining agreements under the national labor law.

REASON FOR GRANTING THE WRIT

An Important Federal Question Is Presented by the Lower Court's Application of the Indiana Oral Contract Statute of Limitations to a Suit Under Section 301 of the Labor-Management Relations Act.

When Congress has set no limitations period for the assertion of a federal statutory right, this Court has sometimes looked to analogous state limitations for a federal standard. See, *e.g.*, *Cope* v. *Anderson*, 331 U.S. 461; *Rawlings* v. *Ray*, 312 U.S. 96. But this Court has *declined* to adopt the state limitations standard where to do so would interfere with federal supremacy (*Holmberg* v. *Armbrecht*, 327 U.S. 392) or with a necessary uniformity in the vindication of uniquely national rights (*McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221; *Burnett* v. *New York Central R. Co.*, 380 U.S. 424). The central question in the present case is whether in the enforcement (in this instance in a federal forum) of rights under Section 301 of the Labor-Management Relations Act, courts may apply varying state limitations periods without frustrating pertinent supremacy and uniformity goals underlying this federal statute. That is an important federal question, which

the court below has resolved in conflict with this Court's rulings both in the result arrived at and the predicates upon which the lower court reached its conclusion.

1. *An Important Federal Question.* Whether the applicable limitations periods for suits under Section 301 are to be found in the diverse state statutes of limitations is a federal question of manifest importance. A very large number of suits in federal and state courts, many of them involving substantial questions of national labor-management relations policy, are annually commenced under Section 301.[1] There is an increasing body of dispute in such litigation over the applicable statute of limitations. Only this year, the question presented in the instant case was ruled upon by the Wisconsin Supreme Court. *Tully* v. *Fred Olsen Motor Service Company,* 134 N.W. 2d 393. The same issue is pending before the Third Circuit in *Falsetti* v. *Local 2026,* No. 15263 (District Court opinion at 34 F.R.D. 461), and the related issue concerning the applicable limitations period under Section 303 of the Act is awaiting decision by the Ninth Circuit. *Fishbach and Moore, Inc.,* v. *International Union of Operating Engineers,* No. 19476 (District Court opinion at 198 F. Supp. 911).

Moreover, subjecting Section 301 litigation to the divergent norms of state limitations creates a discordant disharmony and promotes resort to forum shopping, which this Court has sought to avoid under analogous enactments.[2] See, *Burnett* v. *New York Central R. Co.,* 380

---

[1] We are informed by the Administrative Office of the United States Courts that many hundreds of cases are pending in District Courts under Section 301. See also 1964 Annual Report of the Director of the Administrative Office of the United States Courts, p. 138.

[2] The unresolved status of the pending question creates a double uncertainty. Where plaintiff anticipates a holding that the state limitation applies, it will naturally search for the state with the most favorable limitations period. On the other hand, plaintiff may choose a jurisdiction

U.S. 424; *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221. The diversity here is particularly aggravated, since limitations periods for contract actions provided in the several states vary from as little as 60 days to as long as 20 years. See "State Statutes of Limitations Governing Contract Actions," *infra*, Appendix B, p. 23. And this is an area of litigation where the frequency of overlapping jurisdictions renders the possibility of forum shopping quite real. Today, collective bargaining agreements in major industries regularly transcend state borders, so that a company or union will often have a number of available jurisdictions for litigating rights under a single collective bargaining agreement.

Not only does the adoption of diverse state limitations thus promote disharmony and forum shopping, but extraordinary difficulties are also then created with respect to antiquated state labor law theories which may creep back into Section 301 through the statute of limitations loophole. For instance, after making the applicable limitations a matter of state law, the court below determined that the Indiana statute on oral rather than written contracts applies because Indiana would treat the suit as a common-law action for wages upon an oral agreement for hire rather than as collective bargaining agreement litigation. Yet that theory, whether or not consistent with Indiana law, certainly violates this Court's clear pronouncement in *Evening News*. See *infra*, p. 14. Thus, if the court below is *correct* in applying local law philosophy of labor relations for purposes of choosing the applicable

---

which has held (or he hopes will hold) that state limitations do not apply. In that case, however, it is now unclear what uniform limitations standards will apply under Section 301. In the choice between a yet undetermined federal standard and the varying and uncertain state limitations, the respective parties to Section 301 litigation now experience some embarrassment in deciding whether to urge upon the court a federal or a state limitations standard.

state limitations period, there is then created a dual and conflicting body of labor law theory under Section 301. If, on the other hand, the court below was *mistaken* in adopting antiquated Indiana labor law theory bearing upon the applicable local statute, then the adoption of local limitations under 301 creates the added dilemma that courts must discount the local law to the extent that its choice or application conflicts with federal labor law principles. In either event only confusion, conflict, and complexification can result if Section 301 is subjected to the variant norms of state limitations periods. Cf. the issue pending in *Leh* v. *General Petroleum Corp.* (certiorari granted, #4, Oct. Term, 1965) whether resort is to be had to state or federal law for limitations purposes in characterizing a cause of action under 15 U.S.C. Section 15 as penal or compensatory.

In sum, it is clear that a significant federal question of general application in national labor-management relations law is here presented. And, we submit, it is also clear that the holding below violates this Court's applicable rulings in making state limitations governing on the time for bringing suit under Section 301.

2. *Conflict with This Court's rulings.* In resorting to diverse state limitations, the lower court disregards this Court's decisions requiring uniform federal law under Section 301 and precluding disruptive application of state limitations to uniquely national rights. In *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448, this Court definitely ruled that federal courts are to fashion a body of substantive federal law in implementation of the statute. Subsequently, in *Charles Dowd Box Co.* v. *Courtney,* 368 U.S. 502, the Court extended the substantive law of Section 301 to state litigation. And in *Local 174, Teamsters* v. *Lucas Flour Co.,* 369 U.S. 95, it ruled that in 301 cases "incompatible doctrines of local law must give way to principles of fed-

eral labor law." In the latter decision which rejects the survival of "individualized local rules" in litigation of collective bargaining agreement rights, this Court emphasized (at p. 103) the underlying uniformity goal in terms applicable to the present question:

> "Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills,* requiring issues raised in suits of a kind covered by § 301 to be decided according to the precepts of federal labor policy. More important, the subject matter of § 301(a) 'is peculiarly one that calls for uniform law . . .' The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. . . ."

This Court having thus required under Section 301 what it has characterized as "a uniform body of federal substantive law" (*Smith* v. *Evening News Assn.,* 371 U.S. 195, 200), it becomes clear that the applicable statute of limitations must also be a matter of uniform law, without state-by-state differentiation. This Court has long ago ruled that statutes of limitations *so far affect substantive rights as to require that the limitations rule of the jurisdiction creating the substantive rights apply irrespective of the forum involved.* Thus, when federal courts enforce state rights, state limitations apply (*Guaranty Trust Co.* v. *York,* 326 U.S. 99), and when state courts enforce federal rights, then federal limitations apply (*Burnett* v. *New York Central R. Co.,* 380 U.S. 424; *McAllister* v. *Magnolia Petroleum Co.,* 357 U.S. 221; *cf. Garrett* v. *Moore-McCormack Co.,* 317 U.S. 239). It is thus clear that the statute of limitations applicable to a Section 301 action *is itself a question of federal rather than state law.*

It follows that the requirement of uniformity emphasized in *Lucas Flour* and *Evening News* precludes the adoption of differing state limitations periods for Section 301 litigation. Cf. *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650. True, this Court has as a matter of policy frequently applied analogous state limitations to federal actions when Congress has provided no limitation. But it has *declined* to do so when application of state limitations would impair supremacy (*Holmberg* v. *Armbrecht*, 327 U.S. 392) or the necessary uniformity in implementation of such inherently national rights as arise in maritime and interstate commerce law. See *McAllister* v. *Magnolia Petroleum Co.*, 357 U.S. 221; *Burnett* v. *New York Central R. Co.*, 380 U.S. 424. Certainly, if uniformity precludes differing state limitations under FELA, as this Court held in *Burnett*, the same result must obtain under Section 301.

The uniformity consideration which precludes adoption of varying state limitations to fill the federal void, is highlighted in the concurring opinion of Mr. Justice Brennan in *McAllister, supra*, in terms applicable in the present setting (357 U.S. at 228-230):

> ". . . I do not believe that the absence of specific directions from Congress leads necessarily to the result that state statutes of limitations should apply in cases of this sort . . . the three-year limitation on the Jones Act remedy, 45 U.S.C. § 56, is the ready and logical source to draw upon for determining the period within which this federal right may be enforced. This period should be applied in an action for unseaworthiness brought in a state court, just as it would be applied by the state courts in actions brought under the Jones Act, *Engel* v. *Davenport*, supra. Such a result would be in harmony with the practice in federal admiralty courts of applying state statutes of limitations in enforcing state-created rights. *Western Fuel Co.* v.

> *Garcia*, 257 U.S. 233. The alternative of subjecting the parties' rights to the variant state statutes of limitations and the consequent uncertainty of legal obligation would inject an unnecessarily sporting element into the affairs of men. Cf. *Guaranty Trust Co.* v. *York*, 326 U.S. 99. The mischief to be avoided is the possibility of shopping for the forum with the most favorable period of limitations."

We submit that in adopting the diverse norms of state limitations the court below violates this Court's rulings requiring "a uniform body of federal substantive law" under Section 301, and its decisions declining to adopt state limitations in analogous situations arising under maritime and interstate commerce jurisdiction. The implementation of Section 301 requires uniform federal limitations standards.[3]

---

[3] The rejection of diverse state limitations would not leave this Court without sources for fashioning a limitations standard under Section 301. No less than other principles relegated under *Lincoln Mills* to judicial elaboration, a limitations period can be fashioned by recourse to analogous federal and state norms. (Such recourse to state law for the creation of a federal standard is, of course, a far cry from the state-by-state approach espoused by the court below.)

In fashioning Section 301 limitations standards the doctrine of laches might well be applied, particularly in litigation on arbitral awards, employee discharges, and cases sounding more in equity than law (cf. *Holmberg* v. *Armbrecht*, 327 U.S. 392). In more traditional money damage or wage claims cases this Court might look to generally prevailing statutory limits for suits on contracts. But whatever standard may be adopted, it seems clear that in the present case limitations were tolled by the state suit. That suit was promptly filed after the contract breach; when the *Westinghouse* limitation was removed in *Evening News* and after the Indiana courts had dismissed the state action, this federal suit was filed. As this Court recently emphasized in tolling the FELA limitations period: ". . . the basic inquiry is whether Congressional purpose is effectuated by tolling the statute of limitations in given circumstances." *Burnett* v. *New York Central R. Co.*, 380 U.S. 424, 427. Since the company was from the first put on notice by the state litigation of this contract claim, every consideration of fairness requires tolling of limitations in the present circumstances.

3. *The Decisional Grounds Espoused Below Violate This Court's Pronouncements and Give Rise to a Serious Constitutional Issue.* All apart from the ultimate ruling below, weighty and even constitutional questions are presented by the predicates upon which the lower court rests that ruling. The court opines that while this suit is brought on the vacation pay provisions of the collective bargaining agreement, the action is "actually" grounded on the individual contracts of hire between workers and the company. From that premise the court finds that the action is only one by the union as an agent suing under subsection (b) of Section 301 and *not* subject to subsection (a). And the capstone of this syllogism is the court's conclusion that the contract violation alleged in the suit is purely "a question of state law," which Congress has directed federal courts to adjudicate without recourse to any federal substantive law or uniformity on such matters as limitations.[4]

The central and crucial mistake in the lower court's rationalization is, of course, its view that this suit is actually "based on the contracts of employment between the individual employees and defendant," rather than on the provisions of the union-employer collective bargaining agreement. True, if there had been no employees there would have been no collective bargaining agreement. But to say that because the vacation pay provisions of the bargaining agreement secured employee rights the suit is

[4] The court below states that "the mere fact that the Union is bringing this action instead of the individual employees involved . . . cannot be permitted to circumvent the [Indiana] statute of limitations . . ." *But the assumption that the Indiana statute would necessarily apply had the action been brought in state court by the individual employee begs the central question.* For, as we have previously emphasized, the limitations period of the jurisdiction which is the source of the substantive right, rather than that of the forum, is the governing norm. And if the implementation of Section 301 requires uniform federal limitations standards, then it does so no less when the case is brought in a state court than in a federal court. *Cf. Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95.

"based on" the individual contracts of hire rather than the collective bargaining agreement, is to affirm *generally* that Section 301 actions are not based upon collective agreements. After all, with but few exceptions (*e.g.*, the check-off), the vast majority of collective bargaining agreement provisions secure employee rights, not union rights.[5]

In any event, it is too late in the day to make the collective agreement subservient to the "individual contracts of employment" and transmute a Section 301 suit on a collective agreement into a common-law action for wages. It was the same concept of rights arising "from separate hiring contracts between the employer and each employee" which troubled this Court in *Association of Westinghouse Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, 464, and which the Court recently rejected in *Smith* v. *Evening News*, 371 U.S. 195, 200. In *Evening News* this Court made it clear that no immutable line of demarcation exists between individual employee rights and union rights inhering in collective bargaining agreements:

> "The concept [of *Westinghouse*] that all suits to vindicate individual employee rights arising from a collective bargaining contract should be excluded from the coverage of § 301 has thus not survived. The rights of individual employees concerning rates of pay

---

[5] The lower court's erroneous view that the action is "based on the contracts of employment between the individual employees and defendant" not only leads to its mistaken conclusion that the limitations question is one of state rather than federal law; it also leads it to select the Indiana statute applicable to oral contracts rather than that governing written contracts. Whichever way this Court may ultimately resolve the issue as to the applicability of diverse state limitations periods to Section 301, we urge (*supra*, p. 2) concurrent consideration of the ruling below that a suit on the vacation pay provisions of a collective bargaining agreement is, for limitations purposes, to be treated as if it were based on the individual oral hiring contracts. Cf. *Leh* v. *General Petroleum Corp.*, #4, Oct. Term, 1965.

and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts. Individual claims lie at the heart of the grievance and arbitration machinery, are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contract on which they are based."

Equally vulnerable is the lower court's ruling, based on its "individual contract of employment" theory, that this suit is under Section 301(b) by the union "in behalf of the employees whom it represents," and not subject to Section 301(a) "for the simple reason that no one contends that the defendant owes any wages to the union." This is certainly novel embroidery on this Court's rejection in *Evening News* of the *Westinghouse* ruling which had read wage suits out of Section 301(a). Faced with *Evening News,* the court below cannot avoid recognition of Section 301 jurisdiction, but now purports to find it only in a procedural subsection which this Court has never viewed as a grant of jurisdiction to the federal courts.

Finally, by its "individual contract" rationale the court below *creates the very problem* under Article III of the Constitution which *Westinghouse* had sought to avoid by rejecting federal jurisdiction. The court below concludes that the Indiana statute of limitations applies *because* this vacation pay suit presents "a question of state law" for which Congress has provided a naked federal forum in 301(b). But if Congress has thus created federal jurisdiction solely to resolve a question of state law, the court below has validated the constitutional infirmity which prompted this Court in *Westinghouse* to *reject* federal jurisdiction, and which it definitively avoided after *Lincoln*

Mills by holding that Section 301 invokes "federal substantive law."

In sum, to the other serious errors of the opinion below there must be added the defect that it approves a naked grant of jurisdiction to federal courts to resolve a question of state law. Such a decision cries out for review not only because it wrongly resolves an important federal question on grounds violative of this Court's decisions, but also because it does so on a premise which creates a serious issue under Article III of the Federal Constitution.[6]

Conclusion

The issue presented is one of general concern in the elaboration of Section 301 rights and the enforcement of collective bargaining agreements throughout the nation. We urge review of this important issue, which the court below has resolved contrary to this Court's rulings calling for a uniform body of federal law under Section 301 of the Labor-Management Relations Act.

Respectfully submitted,

JOSEPH L. RAUH, JR.,
JOHN SILARD,
STEPHEN I. SCHLOSSBERG,
HARRIETT R. TAYLOR,
1625 K Street, N.W.,
Washington 6, D. C.,
Attorneys for Petitioner.

Of Counsel:

MILES AND CUMMINGS,
605 Union Title Bldg.,
Indianapolis, Ind.

[6] In view of the constitutional issue, 28 U.S.C. 2403 may be applicable, and there has been no certification below to the Attorney General pursuant to that section. Accordingly, this petition has been served on the Solicitor General pursuant to Rule 33(2)(b).

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 14945 SEPTEMBER TERM—APRIL SESSION, 1965

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Plaintiff-Appellant,*

v.

HOOSIER CARDINAL CORPORATION, AN INDIANA CORPORATION, *Defendant-Appellee*

Appeal from the United States District Court for the Southern District of Indiana, Evansville Division

JUNE 4, 1965

Before SCHNACKENBERG, KNOCH and SWYGERT, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, plaintiff, appeals from a judgment of the district court dismissing plaintiff's complaint because it showed on its face that the causes of action upon which recovery was sought were barred by the statute of limitations of the state of Indiana.

The complaint avers that plaintiff, hereinafter sometimes referred to as the Union, having a collective bargaining agreement with Hoosier Cardinal Corporation, an Indiana corporation, defendant, which required vacation pay for its employees, by this action seeks to rely upon various statutes of the state of Indiana, (a) providing for the payment of wages due to employees at least weekly, Burns Ind. Stat. Ann. (1952 Repl.) § 40-104, (b) making an employer who fails for 10 days after demand to make payment therefor weekly liable for the same together with penalty and reasonable attorneys' fees, to be recovered in a civil action, Burns Ind. Stat. Ann. (1952 Repl.) § 40-105, and (c) providing liquidated damages for

such failure to pay, for each day, 10% of the amount due twice each month, not exceeding double the amount of wages due, and a reasonable fee for plaintiff's attorney, as provided in Burns Ind. Stat. Ann. (1952 Repl.) § 40-102.

It is significant that in this case no recovery is sought for or on behalf of plaintiff union itself. Any recovery in this case would inure to the exclusive benefit of the individual employee in varying amounts depending upon the individual's employment contract with defendant.

The district court relied on Burns Ind. Stat. Ann. (1946 Repl.) § 2-601 (Supp.), which provides a six-year statute of limitations on accounts and contracts not in writing.

The district court noted that the complaint herein was filed on April 8, 1964, which was more than six years from June 1, 1957 when the alleged breach of employment with individual employees occurred.

We agree with and affirm the holding and judgment of the district court. Before arriving at this conclusion we have considered each of the two reasons advanced by plaintiff which seeks to demonstrate that the district court erred.

First, plaintiff contends that no state statute of limitations can bar an action under section 301 of the Labor Management Relations Act, 29 U.S.C.A. § 185. It arrives at this conclusion by reasoning that

> "* * * it is a firm, well-established, and judicially recognized policy of Congress that insofar as concerns the application of legal principles, the resolution of labor questions under federal law should not depend in any manner upon the geographic location in which such an action arises. While the fostering of uniformity in this area normally concerns substantive legal issues, procedural rules which may be dispositive of a dispute (such as the question here involved of the application of a state statute of limitations) are no less significant. The decision of the court below to impose local time limitations on a Section 301 action disturbs the national design of having a federal labor law uniformly applied. * * *"

However it should be noted that § 185 (a) deals with "suits for violation of contracts between an employer and a labor organization representing employees in an industry * * *". The case at bar is not a suit by plaintiff to recover wages due it from defendant, for the simple reason that no one contends that defendant owes any wages to the Union. Therefore we perceive that plaintiff is in error in characterizing the subject matter of this case as the resolution of a labor question. Moreover, § 185 (b) authorizes a labor organization to sue "in behalf of the employees whom it represents in the courts of the United States". There is before us actually a case by an agent to enforce the rights of individual workmen to collect from defendant vacation pay, which it is claimed was due them individually under Indiana law and for which it is clear that they individually could have brought their own suits in the state courts of Indiana. The present suit frankly characterizes the choses in action involved as existing by virtue of the statutory law of Indiana. The question of whether vacation pay is due the workmen here involved is a question of state law. It remains a question of state law even though the terms of a bargaining agreement authorize the workmen's personal rights of action to be maintained for them by their union. The complaint seeks not only wages due for vacation pay, but also statutory penalties and attorneys' fees allowable by an Indiana statute, and thus frankly recognizes the case as a state action. Therefore it is subject to the Indiana statute of limitations.

This result is in accordance with our prior holding in *Kordewick* v. *Indiana Harbor Belt R. Co.*, 7 Cir., 157 F. 2d 753 (1946), cert. den. 329 U. S. 806, where we found that such a contract was oral and thus barred by the Illinois statute of limitations.

To the same effect, and involving the Indiana statute of limitations, is *Albrecht* v. *Indiana Harbor Belt R. Co.*, 7 Cir., 178 F. 2d 577 (1949), where at 578, we said:

> "Although the case at bar was commenced in the District Court of Indiana, the contract nevertheless is to be interpreted under Illinois law. It must still be regarded as an oral contract. However, we must

here apply the applicable Indiana statute of limitations. Guaranty Trust Co. v. York, 326 U.S. 99, 65 S. Ct. 1464, 89 L. Ed. 2079, 160 A.L.R. 1231. Federal Courts are required to give such interpretations to State statutes of limitations as are given to such statutes by the highest court of such States. Moore v. Illinois Central Railroad Co., 312 U.S. 630, 61 S.Ct. 754, 85 L. Ed. 1089. The law of the forum determines whether the action is barred. Karvalsky v. Becker, 217 Ind. 524, 29 N.E. 2d 560, 131 A.L.R. 1074; Hobbs v. Ludlow, 199 Ind. 733, 160 N.E. 450. Burns Ind. Stats. Anno. (1933), Sec. 2-601, provide that actions on oral contracts shall be barred unless commenced within six years after the cause of action accrued.

"The complaint shows on its face that the alleged violations of the contract occurred from August 13, 1926, to December 12, 1938. This action was commenced August 4, 1947. It thus affirmatively appears that this action was not commenced within the six years after the alleged cause of action accrued. It follows that the complaint did not state a claim upon which relief can be granted, and the complaint and action were properly dismissed."

We agree with counsel for defendant when he says in his brief that the mere fact that the Union is bringing this action instead of the individual employees involved does not change the rule that the statute of limitations has barred this action. It is the *cause of action which is barred* by the statute of limitations and *not the particular person bringing the action.* The individual former employees of the defendant for whose benefit this action for vacation pay alleged to be due is brought cannot be permitted to circumvent the statute of limitations, which has clearly barred their claims, by having the Union bring the action in their behalf.

Inasmuch as the recovery sought in the case at bar is solely for the benefit of individual employees, we cannot escape the conclusion that the presence of the Union as the plaintiff cannot justify the maintenance of this action which really belongs to the individual employees, as against the

defense of the Indiana statute of limitations of six years.

Secondly, we reject plaintiff's contention that, if any state statute of limitations applies, this case would be governed by Indiana's 20-year statute of limitations covering actions on written contracts. As we have indicated, plaintiff's action in the district court was based upon the contracts of employment between the individual employees and defendant. There is no evidence or contention that these employment contracts were ever reduced to writing. It was for wages due under these employment contracts that the present action was brought. The 6-year statute of limitations applied to the action. The fact that the authority of the Union to bring the action on behalf of the employees is evidenced by a written agreement is of no significance in determining what Indiana statute of limitations is applicable to the action.

We have given special attention to plaintiff's reliance upon *Smith* v. *Evening News Assn.*, 371 U.S. 195 (1962). As a result thereof, it is our opinion that the result which we now reach in the case at bar is not at variance with the views expressed in the majority opinion in *Smith*.

While defendant makes two other convincing arguments in support of its position in this court, we consider it unnecessary to discuss them, because, for the reasons already given, we deem it necessary that the judgment from which this appeal was taken be affirmed. It is so ordered.

JUDGMENT AFFIRMED.

SWYGERT, *Circuit Judge* (concurring). I concur in affirmance of judgment.

* * * * * * *

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT,
CHICAGO, ILLINOIS 60610

Friday, June 4, 1965

BEFORE: Hon. ELMER J. SCHNACKENBERG, Circuit Judge, Hon. WIN G. KNOCH, Circuit Judge, Hon. LUTHER M. SWYGERT, Circuit Judge.

No. 14945

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO, *Plaintiff-Appellant,*

vs.

HOOSIER CARDINAL CORPORATION, AN INDIANA CORPORATION, *Defendant-Appellee*

Appeal from the United States District Court for the Southern District of Indiana, Evansville Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Evansville Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX B

State Statutes of Limitations Governing Contract Actions

	1 year	2 years	3 years	4 years	5 years	6 years	8 years	10 years	More than 10 years
All Contracts			Colorado [2]	Hawaii [3]	Missouri [6]	Colorado [2] Hawaii [3] Michigan Minnesota New York North Dakota Tennessee		Louisiana [5] Missouri [6]	
All except sealed			Delaware District of Columbia Maryland North Carolina			Alabama Alaska Maine Massachusetts New Hampshire New Jersey Oregon Pennsylvania [9] Rhode Island [10] South Carolina South Dakota Vermont Wisconsin			
Written, whether or not sealed				Arizona [1] California Texas [11]	Arkansas Idaho Kansas Nebraska [7] Oklahoma	Arizona [1] Mississippi New Mexico Nevada Utah Washington	Montana	Illinois Indiana [4] Iowa West Virginia Wyoming [12]	Indiana (20) [4] Ohio (15)
Written, not sealed					Florida Virginia	Connecticut Georgia			
Sealed							Vermont	Alabama Alaska North Carolina Oregon Virginia Wisconsin [12]	Connecticut (17) District of Columbia (12) Florida (20) Georgia (20) Maine (20) Maryland (12) Massachusetts (20) New Hampshire (20) New Jersey (16) [8] Rhode Island (20) [10] South Carolina (20) South Dakota (20) Wisconsin (20) [12]
Oral		California Texas [11]	Arizona Arkansas Connecticut Florida Kansas Mississippi Oklahoma Virginia Washington	Georgia Idaho Nebraska Nevada New Mexico Utah	Illinois Iowa Kentucky Montana West Virginia	Indiana Ohio	Wyoming [12]		
Ware	Delaware	Idaho	Louisiana [5]						

OVERSIZE PAGE—SEE NEXT FRAME

FOR REMAINDER OF PAGE

						Minnesota New York North Dakota Tennessee			
All except sealed			Delaware District of Columbia Maryland North Carolina			Alabama Alaska Maine Massachusetts New Hampshire New Jersey Oregon Pennsylvania [9] Rhode Island [10] South Carolina South Dakota Vermont Wisconsin			
Written, whether or not sealed				Arizona [1] California Texas [11]	Arkansas Idaho Kansas Nebraska [7] Oklahoma	Arizona [1] Mississippi New Mexico Nevada Utah Washington	Montana	Illinois Indiana [4] Iowa West Virginia Wyoming [12]	Indiana (20) [4] Ohio (15)
Written, not sealed					Florida Virginia	Connecticut Georgia			
Sealed							Vermont	Alabama Alaska North Carolina Oregon Virginia Wisconsin [12]	Connecticut (17) District of Columbia (12) Florida (20) Georgia (20) Maine (20) Maryland (12) Massachusetts (20) New Hampshire (20) New Jersey (16) [8] Rhode Island (20) [10] South Carolina (20) South Dakota (20) Wisconsin (20) [12]
Oral		California Texas [11]	Arizona Arkansas Connecticut Florida Kansas Mississippi Oklahoma Virginia Washington	Georgia Idaho Nebraska Nevada New Mexico Utah	Illinois Iowa Kentucky Montana West Virginia	Indiana Ohio	Wyoming [12]		
Wage Suits	Delaware Louisiana [5] New Mexico (60 days)	Idaho Iowa South Dakota Wisconsin	Louisiana [5] Pennsylvania						

[1] 4 years on contract made out of the state; 6, within the state.
[2] 3 years for personal action on a contract; 6, for action on debt founded on a contract.
[3] 4 years for all personal actions on contract except one in debt founded on contract—6 years.
[4] 10 years on written contract for payment of money; 20 years on other written contracts.
[5] 1 year on actions of "workmen, laborers and servants, for the payment of their wages"; 3 years on actions "for salaries of overseers, clerks, secretaries . . ."; 5 years on action "for nullity or rescission of a contract"; 10 years on all other personal actions.
[6] 10 years on contract action for payment of money or property; 5 years all others.
[7] But 4 years on action for damages for failure or want of consideration of contract.
[8] 16 years only on sealed obligations for the payment of money.
[9] 6 years only on action in debt.
[10] Both 6 and 10 year statutes apply only to actions in debt.
[11] Both 2 and 4 year statutes apply only to actions in debt.
[12] 10 years on causes of action accruing out of the state; 20 years within the state.
[13] But 5 years on contracts contracted before the debtor became a resident.